

10 11 2013

SAAD, John

AOC

8/12/92

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV

IN THE MATTER OF:	)	PROCEEDINGS UNDER SECTIONS	16860
	)	104, 122 AND 106(a) OF THE	
	)	COMPREHENSIVE ENVIRONMENTAL	
	)	RESPONSE, COMPENSATION,	
	)	AND LIABILITY ACT OF 1980, AS	
SAAD TROUSDALE ROAD SITE	)	AMENDED BY THE SUPERFUND	
	)	AMENDMENTS AND REAUTHORIZATION	
NASHVILLE, TENNESSEE	)	ACT OF 1986, 42 U.S.C.	
	)	SECTIONS 9606(A) AND 9622	
)		
	)	Docket No.: 92-34-C	

ADMINISTRATIVE ORDER BY CONSENT

I. JURISDICTION

This Administrative Order by Consent (hereinafter "Consent Order") is entered into by the United States Environmental Protection Agency ("EPA") and the parties listed in Appendix "A" attached hereto (hereinafter "Respondents"). EPA acts pursuant to the authority vested in the President of the United States by Sections 104, 106 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9604, 9606 and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), P.L. No. 99-499, and delegated to the Administrator of EPA by Executive Order No. 12580 dated January 23, 1987, 52 Fed. Reg. 2922, and further delegated to the Regional Administrator of Region IV, EPA, and redelegated to the Director, Waste Management Division. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the State of Tennessee was previously notified of this Order.

Respondents voluntarily agree to undertake all actions required of them by the terms and conditions of this Order for the conduct and implementation of a removal action on property owned by Ellis and Kathy Saad at the following location:

Saad Trousdale Road Site
3655 Trousdale Road
Nashville, Tennessee

Solely for the purposes of this Order, Respondents consent to and agree not to contest EPA jurisdiction to issue this Order. Respondents consent to jurisdiction for purposes of entry and enforcement of this Order by EPA. However, Respondents do not admit, accept, concede, or acknowledge the determinations, allegations, findings of fact, conclusions of law, and determinations made by EPA in this Order and specifically reserve the right to contest any such determinations, allegations, findings of fact, conclusions of law, and determinations in any

proceeding regarding the Saad Trousdale Road Site ("the Site") other than actions brought by EPA to enforce this Order.

Respondents' agreement to this Order shall not be construed as an admission of liability or a waiver of any defenses or affirmative defenses in any proceeding, other than to enforce this Order. Respondents' agreement to this Order shall not be construed as an admission of liability, and Respondents' participation in this Order shall not be admissible in any proceeding other than actions brought by the United States to enforce this Order. Furthermore, Respondents specifically deny any fault or liability under CERCLA/SARA or any other statutory or common law and any responsibility for response costs or damages thereunder, and do not, by signing this Order, waive any rights they may have to assert claims under CERCLA/SARA or any other statute or common law against any person, other than the United States, as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

II. PARTIES BOUND

This Consent Order shall apply to and be binding upon the following parties:

1. The Respondents listed in Appendix "A", their successors and assigns and anyone acting in the capacity of an agent, officer, director, employee of a Respondent, and all persons, including, but not limited to, firms, corporations, contractors and consultants, acting under or for Respondents; and
2. EPA and its agents, employees and contractors.

This Order shall not be construed to impose additional personal liability on any individual beyond that imposed under CERCLA, SARA or any other statute.

III. EPA'S FINDINGS OF FACT

For purposes of this Consent Order, EPA finds that:

1. The Saad Trousdale Road Site is located in an industrial/commercial district in Nashville, Tennessee;
2. Oil and solvents have been detected in soil on site. There is a fence around the property. However, the fence does not fully enclose the property and access to the Site is not limited. There are or were five (5) tanks at the Site containing an oil based substance. Two (2) of the tanks are or were open. There are or were exposed drums on site;

3. Results of EPA sampling indicated the presence of waste oil, herbicides, methylene chloride and other solvents, and various metals at the Site in both the groundwater and the soil;
4. Hazardous substances as defined in Section 101(14) of CERCLA and subject to the terms and provisions of CERCLA are present at the Site;
5. At the time the Parties executed the Administrative Order by Consent which Respondents entered into on April 11, 1990 ("original Order"), there was reason to investigate whether stormwater runoff from the Site contributed to flooding problems in the area;
6. Respondents removed and disposed of exposed drums, tanks, and tank contents on the Site pursuant to Section VI, Paragraph 1 of the original Order;
7. Respondents investigated an area at the Site thought to be a sinkhole and submitted a report to EPA dated July 2, 1991 regarding the findings of the investigation pursuant to Section VI, Paragraph 2 of the original Order;
8. The July 2, 1991 report concluded that there was no discrete sinkhole at the Site but that additional investigatory and removal work was necessary in order to determine the extent of contamination at the Site and assess clean-up alternatives;
9. On July 19, 1991, Respondents submitted a proposed work plan to EPA for performance of additional work;
10. On August 22, 1991, with the approval of EPA's OSC, Respondents began field work described in the July 19, 1991 work plan;
11. Pursuant to the previous Consent Order and the schedule contained in the Work Plan, on January 13, 1992, Respondents submitted to EPA a report on the investigatory work and recommendations for further response actions;
12. The January 13, 1992 report submitted to EPA indicated continuing contamination from hazardous substances at the site, including, but not limited to, ethylbenzene, toluene, xylene, tetrachloroethylene, trichloroethylene, PCBs, cadmium, and lead. The report recommended further removal action to address continuing contamination at the Site.

IV. EPA'S CONCLUSIONS OF LAW

Based on EPA's Findings of Fact set out above, EPA concludes that:

1. The above-referenced Site is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);
2. Respondents are persons within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);
3. Hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), are present at the Site;
4. Past and potential migration of hazardous substances from the Site constitutes an actual or threatened release of a hazardous substance into the environment within the meaning of Section 101(22) and 106(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9606(a).

V. EPA'S DETERMINATIONS

Based on the foregoing Findings of Fact and Conclusions of Law and the entire record of this proceeding, the Director of the Waste Management Division has determined that:

1. The release or threat of release of hazardous substances at the Site may present an imminent and substantial endangerment to the public health or welfare of the environment;
2. In order to protect public health and welfare and the environment, it is necessary that action be taken to mitigate the release or threat of release of hazardous substances from the facility into the environment; and
3. The actions required in this Order are consistent with the National Contingency Plan, 40 C.F.R. Part 300.

VI. ORDER

The Parties having reached a resolution of the issues involved in this proceeding, it is hereby AGREED and ORDERED that Respondents shall undertake the following activities pursuant to CERCLA §§ 104, 106, and 122, 42 U.S.C. §§ 9604, 9606 and 9622:

1. By July 15, 1992, Respondents shall submit to EPA a complete and detailed work plan for additional removal work, including site characterization, treatability studies and clean-up. EPA and Respondents agree to

work together to insure that EPA receives a final work plan approved by the EPA by July 22, 1992. EPA and Respondents understand that this schedule requires close continuing consultation between EPA and the Respondents well in advance of the July 15, 1992 deadline and continuing throughout the work plan development process.

2. Within thirty (30) days after EPA's OSC approves the work plan submitted pursuant to Section VI, Paragraph 1 of this Order, Respondents shall initiate any removal work set out in the approved work plan. Respondents shall perform the work in accordance with the schedule set out in the approved work plan.
3. In accordance with the schedule set out in the work plan to be approved pursuant to Section VI, Paragraph 2 of this Order, Respondents shall submit to EPA a report on the results of any additional site characterization, treatability studies, and recommendations for any additional clean-up at the Site.
4. Any offsite disposal facility utilized must be in compliance with EPA's Offsite Policy. Respondents shall provide adequate verification and documentation that any hazardous wastes removed are treated and/or disposed of at approved RCRA treatment and/or disposal facilities.
5. Respondents shall comply with all federal, state and local laws applicable to any action described above.
6. All removal work performed pursuant to this Order shall be under the direction and supervision of a qualified professional with expertise and experience in hazardous waste site clean-up. Respondents shall notify EPA as to the identity of such professional and of any contractors and subcontractors to be used in carrying out the terms of this Order in advance of their work at the Site. EPA reserves the right of disapproval of any engineer or other professional selected by Respondents.
7. Respondents shall use quality assurance, quality control, and chain-of-custody procedures in accordance with EPA, Region IV, Engineering Support Branch Standard Operating Procedures and Quality Assurance Manual (U.S. EPA Region IV, Environmental Services Division, February 1, 1991) throughout all sample collection and analysis activities. The Respondents shall consult with EPA in planning for all sampling and analyses.

8. All sampling collection, sample preservation, chain-of-custody, laboratory analyses, and quality assurance procedures utilized by Respondents pursuant to this Order shall be documented and made available to EPA upon request.
9. Upon request by EPA, Respondents shall provide EPA or its designated representatives under this Consent Order with duplicate and/or split samples of any samples collected in furtherance of work performed in accordance with this Order, and EPA agrees to provide to Respondents the results of any analysis performed by EPA on such samples. Upon request, EPA shall also provide Respondents with duplicate and/or split samples and resulting analyses for any samples collected by EPA at the Site.
10. Respondents shall appoint a Project Coordinator who shall be responsible for implementation of this Order and the activities required herein. The Project Coordinator shall have full authority to make decisions on behalf of Respondents as required under this Order and any approved Work Plan, including, but not limited to, the ability to commit additional resources and the ability to take rapid actions (i.e., emergency response), all with minimal consultation. All reports, comments and other correspondence directed to Respondents will be made available to the Project Coordinator. Respondents reserve the right to change the Project Coordinator upon prior written notice to EPA. EPA reserves the right to disapprove of any Project Coordinator selected by Respondents.
11. EPA shall appoint an OSC who shall have the authority vested by the National Contingency Plan at 40 C.F.R. Part 300. The OSC will be EPA's designated representative at the Site and will have the right to move freely about the Site at all times when work is being carried out pursuant to this Order. The OSC will advise Respondents as soon as the OSC becomes aware that any action taken pursuant to the work plan is not consistent with the National Contingency Plan.
12. All correspondence, reports, work plans, and other writing required under the terms of this Order, to be submitted to EPA shall be sent by certified mail, return receipt requested, to the following addressees

or to such other addressees as Respondents or EPA hereafter may designate in writing:

Fred Stroud
On-Scene Coordinator
U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 347-3931

with a required copy to:

Elizabeth B. Davis
Office of Regional Counsel
U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365
(404) 347-2641

13. All correspondence, reports, and other writings required under the terms of this Order to be submitted to Respondents shall be by certified mail, return receipt requested, to the following address:
- Mary Jane Norville
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303-1786
14. All records produced by Respondents and delivered to EPA in the course of implementing this Order shall be available to the public unless identified and substantiated as confidential business information by Respondents in conformance with 40 C.F.R. Part 2. Records so identified shall be treated as confidential only in accordance with the applicable confidentiality regulations. No analytical data, including sampling and monitoring data or hydrological or geological information, shall be considered confidential.
15. Respondents shall designate a representative who shall preserve all records developed pursuant to implementation of any and all Consent Orders executed by the parties for a period of at least six (6) years following completion of all work conducted by Respondents pursuant to this or any subsequent Order.
16. Respondents shall provide access to the Site to EPA and its employees, contractors, consultants, or designated representatives for the purposes of overseeing the implementation of this Order.

To the extent that work areas are presently owned by parties other than those bound by this Order, Respondents have obtained or will use reasonable efforts to obtain Site access agreements from present owners and possessors. Such agreements shall provide access to EPA and/or their authorized representatives. In the event that Respondents cannot obtain Site access agreements within fourteen (14) days, the Respondents shall notify EPA within an additional fourteen (14) days regarding both the lack of, and efforts to obtain, such agreements. In such event, EPA may assist Respondents, or assume the responsibility of obtaining such access. Failure by Respondents to execute the activities required under this Order because of a failure to obtain Site access agreements, after use of all reasonable efforts, does not constitute a violation.

17. Upon agreement of the Parties, this Order shall be amended as necessary to address any additional removal work necessary to adequately decontaminate the Site in order to protect public health and the environment or for any other reasons as the Parties may find mutually desirable.
18. Any modifications pertaining to the work to be accomplished or any activities required hereunder must be reduced to writing by a duly authorized representative of the Respondents and the OSC within 48 hours after agreement is reached, so that there will be no delay in accomplishing the work requirements.
19. Notwithstanding compliance with the terms of this Order, Respondents may be required by EPA pursuant to its statutory authority to take further actions as necessary to abate the endangerment posed by conditions at the Site consistent with applicable law.
20. In the event that the OSC determines that activities implemented by Respondents are not in compliance with this Consent Order or that any other circumstances or activities are creating an imminent and substantial endangerment to the public health or welfare or the environment, the OSC may order Respondents to halt further implementation of this Consent Order for such period of time as is necessary to abate the endangerment. In addition, EPA reserves the right to carry out all activities pursuant to this Order and such other activities as it deems necessary and not inconsistent with the NCP, including but not limited to federally funded response activities and subsequent cost recovery actions.

21. Neither the United States nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents, their officers, directors, employees, agents, servants, receivers, trustees, successors, or assigns, or of any persons including but not limited to firms, corporations, subsidiaries, contractors or consultants, in carrying out activities pursuant to this Order.
22. Respondents acknowledge that EPA will incur costs at the Site after the effective date of this Order for oversight of Respondents' activities at the Site. Respondents shall fully reimburse EPA for such costs within forty-five (45) days after receipt of EPA's written demand for payment. Payment shall be made by certified or cashier's check to "EPA Hazardous Substance Superfund" and sent to:

United States Environmental Protection Agency
Region IV
Attn: Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

with a required copy to:

Elizabeth B. Davis
Office of Regional Counsel
U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

23. Respondents are advised that, pursuant to Section 106(b) of CERCLA, willful violation of or failure to comply with this Consent Order or any portion thereof may subject Respondents to a civil penalty of not more than \$25,000 for each day in which such violations occur or in which such failure to comply continues. Failure to comply with this Order or any portion thereof without sufficient cause may also subject Respondents to liability pursuant to Section 107(c)(3) of CERCLA for damages in the amount of three (3) times the total of all costs incurred by the government as a result of Respondents' failure to take proper action.
24. Nothing herein is intended to release any claims, causes of action or demands in law or equity against any person, firm, partnership, or corporation not a signatory to this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling,

transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, or taken to or from, the Site. This Order does not constitute preauthorization of funds under Section 111(a)(2) of CERCLA. Further, Respondents waive any rights they may have to seek reimbursement from the Superfund under Sections 106(b)(2), 111 and 112 of CERCLA for any costs incurred or to be incurred by Respondents in performing the removal action at the Site and complying with the terms of this Order.

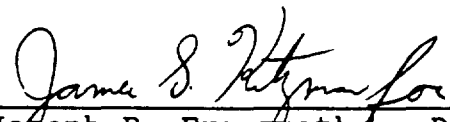
25. No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules or any other writing submitted by Respondents shall be construed as relieving Respondents of their obligation to obtain such formal approvals as may be required herein.
26. Respondents' activities under this Order shall be performed within the time limits set forth, unless performance is delayed by events which constitute a force majeure. For purposes of this Order, a force majeure is defined as any event arising from causes beyond the reasonable control of Respondents (for example, but not limited to, fires, natural disasters, riots, wars, unavoidable and unforeseeable labor strikes, unexpectedly adverse weather conditions, contractor failures, and the unforeseeable and unavoidable inability to obtain necessary permits, Site access authorization, licenses, certification). Inability to obtain necessary permits, site access authorization, licenses and/or certification shall be deemed unforeseeable and unavoidable only where Respondents have acted in a timely fashion in trying to obtain the necessary permits, authorization, licenses and/or certification. Increased costs incurred by Respondents in conducting the removal action or changed economic circumstances of Respondents shall not be considered as constituting a force majeure.

Respondents shall notify EPA by telephone within three (3) business days and in writing no later than seven (7) business days from the date Respondents knew or should have known of any event which Respondents contend constitutes a force majeure as defined above. The written notice shall describe fully the nature of the delay, why the delay is beyond the control of the Respondents, the actions taken and/or that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable by which the actions to mitigate, prevent

and/or minimize the delay will be taken. EPA shall decide, based on all information available, whether a force majeure occurred and to what extent the schedule affected by the delay must be extended. Respondents shall adopt all reasonable measures to avoid or minimize any such delay.

27. The work described by this Order is consistent with the National Contingency Plan (NCP) and the costs incurred by Respondents in performing this work shall not be considered to be a penalty.
28. EPA agrees that Respondents are not the only potentially responsible parties ("PRP's") at the Site, and Respondents are entitled to contribution protection within the scope and meaning of Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), from nonrespondents for work performed by Respondents under this Order. EPA will use its best efforts to make certain that Respondents' cooperation in performing the work under this Order is recognized.
29. The effective date of this Order shall be the date of its execution by the Director, Waste Management Division. Notice of the execution shall be given to Respondents and shall be deemed to have been received by Respondents upon receipt by Mary Jane Norville, counsel for Respondents.

For the U.S. Environmental Protection Agency:



Joseph R. Franzmathes, Director
Waste Management Division
U.S. EPA - Region IV
345 Courtland Street, N.E.
Atlanta, Georgia 30365

Date: AUG 12 1992

Attachment A
Administrative Order on Consent

10 11 0024

American Bread Co.
Aladdin Industries, Inc.
Amtrol, Inc.
Arcata Graphics/Baird Ward
Autow Truck Rental, Inc.
The Bailey Company, Inc.
Beaman Bottling Co.
Beaman Lincoln Mercury, Inc.
Beaman Pontiac Company
Bridgestone-Firestone, Inc.
Budget Rent-A-Car Corporation
Capitol Chevrolet
Carrier Corporation
Chevron USA Inc.
Colonial Baking Co.
Commercial Carriers, Inc.
CSX Transportation, Inc.
DACCO Incorporated
Davidson Equipment Co., Inc.
DET Distributing
The Duriron Company, Inc.
Earl Dunn Pontiac, Inc.
Gulton Corporation
E.I. du Pont de Nemours & Co.
Ford Motor Company
General Electric Company
Genesco, Inc.
The Goodyear Tire & Rubber Company
Hardaway Construction Co.
Hertz Equipment Rental Corporation
Hippodrome Oldsmobile, Inc.
ITT Grinell, ITT Nesbitt, subsidiaries of ITT Corporation
Jefferson Smurfit Corporation and Container Corporation of America
Jim Reed Chevrolet Company, Inc.
Kraft General Foods
Krueger Ringier, Inc.
M. Cohen Iron & Metal Co.
M & M Oil Co., Inc.
MAPCO Petroleum, Inc.
Marathon Oil Company
The Mead Corporation
Midas International Corporation
Nashville Drum Service
Nashville Electric Service
Nashville Gas Company
Nashville Machine Company, Inc.
National Car Rental System, Inc.

Nixon Enterprises, Inc.
Occidental Chemical Corporation
Odom's Tennessee Pride Sausage, Inc.
Oman Construction Co., Inc.
Opryland USA Inc.
Overnite Transportation Company
PACCAR, Inc.
Paramount Packaging Corporation
Pathway Bellows, Inc.
Pirelli Armstrong Tire Corporation
Power Equipment Company
Power & Telephone Supply Co.
Precision Products of Tennessee, Inc.
Precision Tubular Heater Corp.
The Procter & Gamble Manufacturing Company
R.C. Bottling Co.
Red Kap Industries
Robert Orr/Sysco
Rockwell International Corporation
Rogers Manufacturing
Rudy's Farm Company
Ryder Truck Rental, Inc.
Samsonite Furniture
Saunders Leasing System, Inc.
Scoville, Inc.
Sears, Roebuck & Co.
Sequa Corporation
SKF USA Inc.
South Central Bell
Southland Supply Company
State Industries, Inc.
Steiner-Liff Iron & Metal Company
Superior Motors
Tennessee Cartage Co., Inc.
Tennessee Farmers Cooperative
Textron Aerostructures
Truckstops of America
TRW, Inc.
Union Oil Company of California, d/b/a UNOCAL
United Parcel Service
Vic Jenkins Chevrolet
Waller Buick, Inc.
Western Auto Supply, Inc.
Wilco Truck Rental, Inc.
Williamson County Board of Education
Wometco Vending of Tennessee, Inc.
Yellow Freight System, Inc.



10 11 0025

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.
ATLANTA, GEORGIA 30365



AUG 13 1992

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mary Jane Norville
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303-1768

RE: Saad Site
Nashville, Tennessee

Dear Mary Jane:

As we have discussed and in accordance with Paragraphs VI(13) and (29) of the enclosed Administrative Order on Consent (AOC), this letter formally notifies the Respondents to the AOC that the Director of the Waste Management Division executed the AOC on August 12, 1992.

If you have any questions or comments, please do not hesitate to contact me at (404) 347-2641, extension 2283.

Best regards.

Sincerely,

Elizabeth B. Davis
Assistant Regional Counsel

Enclosure

cc: Fred Stroud